

REMARKS

Claims 13 to 30 are now pending.

Reconsideration is respectfully requested based on the following.

Claims 13 to 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable in view of U.S. Patent No. 7,124,027 ("Ernst").

In rejecting a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 13 provides for "ascertaining, by the evaluation device, whether, *assuming that the preceding vehicle performed a deceleration*, a collision with the preceding vehicle would be avoidable as a function of a reaction time of the driver and a maximum possible deceleration of the motor vehicle." The Ernst reference does not identically disclose (or suggest) this feature, as provided for in the context of the presently claimed subject matter. As to the text at col. 27, line 15 to col. 28, line 63 (Ernst), even if this section may generally refer to "a decelerating lead vehicle" (Ernst, col. 27, line 37), it does not identically disclose (or even suggest) the feature of "*assuming*" that the lead vehicle begins a deceleration, as provided for in the context of the presently claimed subject matter.

The Ernst reference refers to "three ways to approach the lead vehicle decreasing speed situation" and to a "*measured* lead vehicle deceleration heuristic can be used." (Ernst, col. 27, line 42-53) (emphasis added). This approach is clearly a *measured* deceleration and not an *assumed* deceleration. Another "approach is to use the lead vehicle count speed equation combined with a *deceleration* threshold *detection* scheme to trigger reductions in v[elocity] when *in the presence of a lead vehicle deceleration* that exceeds the threshold." (Ernst, col. 28, lines 31-34). This too is clearly a *measured/actual* deceleration and not an *assumed* deceleration. A final approach uses an "optimized values heuristic[, which] . . .

uses the lead vehicle constant speed equation with values optimized for a statistical mix of collision scenarios”. (Ernst, col. 27, lines 45-48). The “lead vehicle constant speed equation” (LVCS) is long (Ernst, col. 21, line 62 to col. 22, line 38), but it generally concerns how the system deals with an *already detected deceleration* of the lead vehicle, and what value the system should assume will be the final speed of the lead vehicle -- *after a deceleration has already been performed*. The LVCS has nothing to do with *assuming* a deceleration will occur.

In reply, the Office conclusorily asserts that “[t]he assumption that a vehicle decelerates to stopped or a predetermined percentage reads on the claimed assuming the preceding vehicle performed a deceleration.” Even if this were true, it misapprehends the prior art. Also, even if the Ernst reference may refer to assumptions in relation to lead vehicle characteristics (for example, the Ernst reference may, conditioned on a *measured* deceleration, assume the final speed of the lead vehicle (e.g., stopped or a predetermined percentage)), the Ernst reference simply does not *assume* “that the preceding vehicle performed a deceleration” in the first place. “To assume” has an abundantly plain meaning. It is very clear from the Ernst reference that the actual “performance” of the deceleration is measured or detected -- and is therefore not “assumed.” For at least these reasons, the Ernst reference does not disclose the feature of “assuming that the preceding vehicle performed a deceleration,” as provided for in the context of the presently claimed subject matter.

Still further, the Office acknowledges that the Ernst reference does not disclose the feature of “a function of a reaction time of the driver and a *maximum possible deceleration of the motor vehicle*.” Instead, the Office conclusorily asserts that “it can be seen that a trade-off exists between the warning times and driver braking force,” and “that the amount of braking force used in determining whether an accident is avoidable is obviously interchangeable. . .” Office Action at page 4. Even though there may be a trade-off between these two considerations, the cited art plainly teaches away from the claim feature. In this regard, the Ernst reference states that the “system 100 *should* provide a user with a warning in time for the user to avoid a collision without having t[o] break the vehicle 102 *at a braking level that exceeds a braking threshold at which the user is comfortable*.” (Ernst, col. 19, line 65 to col. 20, line 2) (emphasis added). It is abundantly plain that the Ernst reference specifically teaches away from any calculation involving “a *maximum* possible deceleration of the motor vehicle” as provided for in the context of claim 13.

The brake-force distinction is relevant by itself, but also relates to the previous argument. The Ernst reference provides a system that engages a warning *only* upon a *measured* lead vehicle deceleration. The presently claimed subject matter relates to a warning system that assumes a deceleration will be performed. Thus, the context in which the warning threshold is calculated is fundamentally different, leading to two different braking variables (e.g., "comfortable" and "maximum"). A system that waits for an actual, i.e. measured/detected, lead-vehicle deceleration (as in the Ernst reference), and then only issues a warning when a maximum break-force would be required to avoid a collision (as in claim 13) would be inoperably dangerous. Thus, it would not be obvious to a person of ordinary skill in the art to combine the teachings of the Ernst reference (i.e. measured lead vehicle deceleration) with "*a maximum possible deceleration of the motor vehicle.*"

Accordingly, claim 13 is allowable, as are its dependent claims 14 to 20.

Claim 21 includes features like those of claim 13, and is therefore allowable for essentially the same reasons as claim 13, as are its dependent claims 22 to 24.

In summary, all of claims 13 to 30 are allowable.

CONCLUSION

In view of the foregoing, all of claims 13 to 30 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

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